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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 JOHN L. ERVIN, an individual,
10
11 Plaintiff,
12 vs.
13 COUNTY OF SAN DIEGO, and
14 DOES 1-10, inclusive,
Defendants.

CASE NO. 14cv1142 WQH
(BGS)

ORDER

HAYES, Judge:

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16 The matter before the Court is the Motion to Stay the Action, or in the
17 Alternative, Dismiss Plaintiff's Complaint, filed by Defendant County of San Diego.
18 (ECF No. 4).

19 **BACKGROUND**

20 On May 6, 2014, Plaintiff John L. Ervin, proceeding pro se, initiated this action
21 by filing a Complaint alleging that Defendant County of San Diego violated 42 U.S.C.
22 § 1983, and seeking damages and injunctive relief. (ECF No. 1).

23 On May 28, 2014, Defendant filed a Motion to Stay the Action, or in the
24 Alternative, Dismiss Plaintiff's Complaint. (ECF No. 4). Defendant contends, inter
25 alia, that the Court should abstain pursuant to *Younger v. Harris*, 401 U.S. 37 (1971)
26 due to an ongoing state-court action involving the same matter raised in the Complaint.
27 Defendant requests that the Court stay this action until the state-court action is
28 concluded, or, alternatively, dismiss this action.

On June 17, 2014, Plaintiff filed a response, agreeing that *Younger* abstention is

1 appropriate and agreeing to a stay pending resolution of the related state-court action,
2 but opposing dismissal of this action. (ECF No. 7).

3 On June 23, 2014, Defendant filed a reply brief requesting that the Court dismiss
4 this action pursuant to *Younger*, or alternatively, stay the action as agreed by the parties.
5 (ECF No. 8).

6 RULING OF THE COURT

7 Based upon the agreement of the parties and the Court's review of the filings in
8 this action, the Court finds that *Younger* abstention is appropriate due to the pending
9 state-court action captioned, *Ervin v. San Diego County*, San Diego County Superior
10 Court case number 37-2014-00000207-CU-WM-CTL. *See generally Gilbertson v.*
11 *Albright*, 381 F.3d 965, 970-75 (9th Cir. 2004) (discussing the elements of *Younger*
12 abstention). The Court finds that a stay, rather than dismissal, is appropriate at this
13 stage based upon the allegations of the Complaint. *See id.* at 975 (“[A]n abstention-
14 based stay order, rather than a dismissal, is appropriate when damages are at issue.”).

15 IT IS HEREBY ORDERED that the Motion to Stay the Action, or in the
16 Alternative, Dismiss Plaintiff's Complaint is GRANTED as follows. (ECF No. 4). The
17 Court stays this action pending final resolution of the related action pending in San
18 Diego County Superior Court. Defendant shall file a status report regarding the state-
19 court action ninety (90) days from the date of this Order, and every ninety (90) days
20 thereafter until the state-court action has concluded. The Clerk of the Court shall
21 administratively close this action without prejudice to any party and with leave to be
22 reopened by the Court upon notification that the state-court action has concluded.

23 DATED: July 21, 2014

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25 **WILLIAM Q. HAYES**
26 United States District Judge
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